

1 Stephen M. Rummage, *pro hac vice*  
2 Jonathan M. Lloyd, *pro hac vice*  
Martin Fineman (Cal. Bar No. 104413)  
3 Sam N. Dawood (Cal. Bar No. 178862)  
DAVIS WRIGHT TREMAINE LLP  
4 505 Montgomery Street, Suite 800  
San Francisco, California 94111-6533  
5 Telephone: (415) 276-6500  
Facsimile: (415) 276-6599  
6 Email: [martinfineman@dwt.com](mailto:martinfineman@dwt.com)  
7 [samdawood@dwt.com](mailto:samdawood@dwt.com)

8 Attorneys for Defendant Washington Mutual Bank

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10 IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE

12 SIDNEY SCHOLL and FELTON A. SPEARS, )  
JR., on behalf of themselves and all others )  
13 similarly situated, )

14 Plaintiffs, )

15 v. )

WASHINGTON MUTUAL, INC., a Washington )  
17 corporation; WASHINGTON MUTUAL BANK, )  
18 FA (aka WASHINGTON MUTUAL BANK); )  
FIRST AMERICAN EAPPRAISEIT, a Delaware )  
19 corporation; and LENDER'S SERVICE, INC., )

20 Defendants. )  
21 \_\_\_\_\_ )

Case No. 5:08-cv-00868 (HRL)

CLASS ACTION

DEFENDANT WASHINGTON MUTUAL  
BANK'S NOTICE OF MOTION AND  
MOTION TO DISMISS PLAINTIFFS'  
FIRST AMENDED COMPLAINT

(Fed. R. Civ. P. 12(b)(1) and 12(b)(6))

Date: Tuesday, July 15, 2008  
Time: 10:00 a.m.

Department: SJ, Courtroom 2, 5th Floor

DAVIS WRIGHT TREMAINE LLP

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on Tuesday, July 15, 2008, at 10:00 a.m.,<sup>1</sup> or as soon thereafter as the matter may be heard in Courtroom Two of the United States District Court for the Northern District of California, San Jose Division, located at 280 South First Street, Fifth Floor, San Jose, California, 95113, defendant Washington Mutual Bank, a federal savings association ("WMB"), will and hereby does move this Court for an order dismissing the First Amended Complaint for Damages, Equitable, Declaratory and Injunctive Relief filed by plaintiffs on March 28, 2008, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

WMB makes this motion based on the grounds that each of Plaintiffs' seven Causes of Action (i.e., for (1) violation of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607 *et seq.*, (2) "unlawful" business practices in violation of the California Unfair Competition Law ("UCL"), Business & Professions Code § 17200 *et seq.* (3) "unfair" business practices in violation of the California UCL, (4) "fraudulent" business practices in violation of the California UCL, (5) violation of the Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*, (6) breach of contract, and (7) quasi contract/unjust enrichment) fails to state a claim upon which relief can be granted, and that the Court lacks subject matter jurisdiction over Plaintiffs' claims under the UCL.

WMB asks that the Court dismiss the complaint with prejudice because (a) on the admitted facts, plaintiffs cannot allege a federal claim under RESPA, and (b) plaintiffs' state law claims fall short on both federal law and state law grounds, because federal law, including the Home Owners' Loan Act ("HOLA") and regulations promulgated thereunder, preempts plaintiffs' claims based on state law, and in any event, plaintiffs have not properly alleged any of their state law claims.

This Motion rests on the concurrently filed Memorandum of Points and Authorities, the Request for Judicial Notice and the attachments thereto, the pleadings and records on file, such

<sup>1</sup> Pursuant to the Court's Standing Order Regarding Case Management in Civil Cases, Counsel for Washington Mutual Bank contacted plaintiffs' counsel (as well as counsel for the other defendants) at the email addresses listed on the Electronic Court Filing system on May 1, 2008, to confer regarding the hearing date for this motion. All counsel have agreed on the noting date set forth above.

1 further papers as the parties may file in connection with this Motion, and such further argument  
2 and evidence as the parties may present in connection with the hearing on this Motion.

3 Respectfully submitted this 2nd day of May, 2008.

4 DAVIS WRIGHT TREMAINE LLP

5 By /s/ Stephen M. Rummage

6 Stephen M. Rummage, *pro hac vice*

7 Jonathan M. Lloyd, *pro hac vice*

8 Martin Fineman (Cal. Bar No. 104413)

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10 Attorneys for Defendant Washington Mutual Bank

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